

2/7/94

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
COX CREEK REFINING COMPANY, ) Docket No. TSCA-III-421  
 )  
Respondent )

ORDER DENYING MOTION FOR ACCELERATED DECISION

Currently pending is a Motion for Accelerated Decision (Motion) filed by the Complainant in this proceeding. This Motion seeks an entry of a decision in favor of the Complainant on all liability issues and asks that a civil penalty of \$36,000 be assessed against the Respondent. Complainant filed its Motion pursuant to Section 22.20 of the EPA Rules of Practice (Rules), 40 C.F.R. §20.22, and contends that there are no genuine issues of material fact in this cause, based on the Complaint, the Answer and the prehearing submissions of the parties.

The Respondent opposes the Complainant's Motion on the grounds that: the facts are more extensive than those set out in the motion, that the penalty amount is contested and that there is an issue regarding the effect of the penalty being sought on the Respondent's business. As a result, Respondent requests that the Motion be denied in its entirety and that the matter be set for hearing as to liability and penalties.

Under Section 22.20(a) of the Rules, a motion for accelerated decision should be granted only if there are no issues of material fact to be tried and the party filing the

motion is entitled to judgment as a matter of law. A review of the pleadings herein, including the Motion and the reply, the Complaint and Answer and the prehearing exchanges,<sup>1</sup> indicates that there are genuine issues of material fact to be heard and that there are contested legal issues, both regarding liability and penalty amount. For example, footnote 1 of the motion raises contested factual issues regarding the seventh transformer and there is also a factual issue regarding responsibility for the 1986 annual report. Moreover, the extensive analysis in the motion involving interpretation of pertinent penalty policies, regulations and statutory sections, shows that there are contested legal and factual issues on liability and penalty amount. In this latter regard, it should be noted that the Respondent is claiming mitigating circumstances, particularly regarding its ownership timing and involvement, matters that might be relevant if the Presiding Judge considers it necessary not to follow the civil penalty guidelines in the penalty policy, a course of action authorized under Section 22.27(b) of the Rules.

Further, while there may be uncontested matters relating to the six counts in the Complaint, to handle them piecemeal in dealing with the Motion, is not the preferable course. No

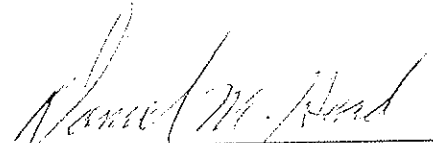
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<sup>1</sup> It should be noted that the prehearing exchange material cannot be used as factual matter supporting accelerated decision unless it is in an uncontested affidavit form. Reliance on reports or other material that are proposed exhibits is unacceptable since such material has not yet been admitted into evidence, nor verified by being sworn to as an affidavit must be.

particular time or expense is saved by such piecemeal decisionmaking since all the facts relating to the alleged offenses will have to be presented on the record to assess properly any penalty that might be appropriate.

Under the above circumstances, the Complainant's Motion for Accelerated Decision should be, and hereby is, denied.

SO ORDERED.

  
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Daniel M. Head  
Administrative Law Judge

Dated: February 4, 1994  
Washington, DC

IN THE MATTER OF COX CREEK REFINING COMPANY, Respondent,  
Docket No. TSCA-III-421

CERTIFICATE OF SERVICE

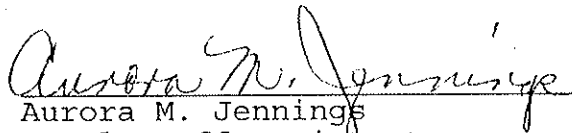
I certify that the foregoing Order Denying Motion for Accelerated Decision dated, Feb. 2, 1994, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to: Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 3  
841 Chestnut Building  
Philadelphia, PA 19107

Copy by Certified Mail  
Return Receipt Requested

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Aurora M. Jennings  
Legal Staff Assistant  
Office of the Administrative  
Law Judges

Dated: February 2, 1994  
Washington, D.C.